

## § 707.9

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statement that dividends cannot remain on account and that payout of dividends is mandatory.

(d) *Bonuses.* Except as provided in paragraph (e) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The “annual percentage yield,” using that term;

(2) The time requirements to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(5) When the bonus will be provided.

(e) *Exemption for certain advertisements*—(1) *Certain media.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4) and (d)(5) of this section:

(i) Broadcast or electronic media, such as television or radio;

(ii) Outdoor media, such as billboards; or

(iii) Telephone response machines.

(2) *Indoors signs.* (i) Signs inside the premises of a credit union (or the premises of a share or deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a sign exempted by paragraph (e)(2) of this section states a rate of return, it shall:

(A) State the rate as an “annual percentage yield,” using that term or the term “APY.” The sign shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

(3) *Newsletters.* (i) Newsletters sent by a credit union to existing members only are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a newsletter exempted by paragraph (e)(3) of this section states a rate of return, it shall:

(A) State the rate as an “annual percentage yield,” using that term or the term “APY.” The newsletter shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

(f) *Additional disclosures in connection with the payment of overdrafts.* Credit unions that promote the payment of overdrafts in an advertisement must include in the advertisement the disclosures required by § 707.11(b) of this part.

(Approved by the Office of Management and Budget under control number 3133–0134)

[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 61 FR 114, Jan. 3, 1996; 63 FR 71575, Dec. 29, 1998; 70 FR 72898, Dec. 8, 2005; 73 FR 30477, May 28, 2008]

## § 707.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of TISA (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with the requirements of TISA and this part.

(b) *Civil liability.* Section 271 of TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of TISA and this part; Section 271 is repealed effective September 30, 2001.

(c) *Record retention.* A credit union shall retain evidence of compliance with this regulation for a minimum of two years after the date disclosures are required to be made or action is required to be taken.

(Approved by the Office of Management and Budget under control number 3133–0134)

[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 61 FR 114, Jan. 3, 1996; 63 FR 71575, Dec. 29, 1998]

## § 707.10 [Reserved]

## § 707.11 Additional disclosure requirements for overdraft services.

(a) *Disclosure of total fees on periodic statements*—(1) *General.* A credit union must separately disclose on each periodic statement, as applicable:

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(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term “Total Overdraft Fees;” and

(ii) The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

(2) *Totals required.* The disclosures required by paragraph (a)(1) of this section must be provided for the statement period and for the calendar year-to-date.

(3) *Format requirements.* The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 707.6(a)(3), using a format substantially similar to Sample Form B-10 in appendix B.

(b) *Advertising disclosures for overdraft services—(1) Disclosures.* Except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any advertisement promoting the payment of overdrafts must disclose in a clear and conspicuous manner:

(i) The fee or fees for the payment of each overdraft;

(ii) The categories of transactions for which a fee for paying an overdraft may be imposed;

(iii) The time period by which the member must repay or cover any overdraft; and

(iv) The circumstances under which the credit union will not pay an overdraft.

(2) *Communications about the payment of overdrafts not subject to additional advertising disclosures.* Paragraph (b)(1) of this section does not apply to:

(i) An advertisement promoting a service where the credit union’s payment of overdrafts will be agreed upon in writing and subject to part 226 of this title (Regulation Z);

(ii) A communication by a credit union about the payment of overdrafts in response to a member-initiated inquiry about share accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or a credit union’s Internet site, is not a response

to a member-initiated inquiry for purposes of this paragraph;

(iii) An advertisement made through broadcast or electronic media, such as television or radio;

(iv) An advertisement made on outdoor media, such as billboards;

(v) An ATM receipt;

(vi) An in-person discussion with a member;

(vii) Disclosures required by Federal or other applicable law;

(viii) Information included on a periodic statement or a notice informing a member about a specific overdrawn item or the amount the account is overdrawn;

(ix) A term in a share account agreement discussing the credit union’s right to pay overdrafts;

(x) A notice provided to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union’s overdraft service; or

(xii) An opt-out or opt-in notice regarding the credit union’s payment of overdrafts or provision of discretionary overdraft services.

(3) *Exception for ATM screens and telephone response machines.* The disclosures described in paragraphs (b)(1)(ii) and (b)(1)(iv) of this section are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

(4) *Exception for indoor signs.* Paragraph (b)(1) of this section does not apply to advertisements for the payment of overdrafts on indoor signs as described by § 707.8(e)(2) of this part, provided that the sign contains a clear and conspicuous statement that fees may apply and that members should contact an employee for further information about applicable fees and terms. For purposes of this paragraph (b)(4), an indoor sign does not include an ATM screen.

(c) *Disclosure of account balances.* If a credit union discloses balance information to a member through an automated system, the balance may not include additional amounts that the credit union may provide to cover an item when there are insufficient or unavailable funds in the member's account, whether under a service provided in its discretion, a service subject to part 226 of this title (Regulation Z), or a service to transfer funds from another member account. The credit union may, at its option, disclose additional account balances that include such additional amounts, if the credit union prominently states that any such balance includes such additional amounts and, if applicable, that additional amounts are not available for all transactions.

[70 FR 72898, Dec. 8, 2005, as amended at 74 FR 36104, July 22, 2009; 75 FR 47175, Aug. 5, 2010]

#### APPENDIX A TO PART 707—ANNUAL PERCENTAGE YIELD CALCULATION

The annual percentage yield (APY) measures the total amount of dividends a credit union pays on an account based on the dividend rate and the frequency of compounding. The annual percentage yield is expressed as an annualized rate, based on a 365-day year. (Credit unions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.) Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield earned calculations for statements. The annual percentage yield reflects only dividends and does not include the value of any bonus, as that term is defined in part 707, that may be provided to the member to open, maintain, increase or renew an account. Dividends, interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future. These formulas apply to both dividend-bearing and interest-bearing accounts held by credit unions.

##### PART I. ANNUAL PERCENTAGE YIELD FOR ACCOUNT DISCLOSURES AND ADVERTISING PURPOSES

In general, the annual percentage yield for account disclosures under §§707.4 and 707.5 and for advertising under §707.8 is an annualized rate that reflects the relationship between the amount of dividends that would be earned by the member for the term of the

account and the amount of principal used to calculate those dividends. The amount of dividends that would be earned may be projected based on the most recent past declared rate or an anticipated future rate, whichever the credit union judges to most reasonably approximate the dividends to be earned. Special rules apply to accounts with tiered and stepped dividend rates, and to certain term share accounts with a stated maturity greater than 1 year.

##### A. General Rules

Except as provided in Part I. E. of this appendix, the annual percentage yield shall be calculated by the formula shown below. Credit unions may calculate the annual percentage yield using projected dividends based on either the rate at the last dividend declaration date or the rate anticipated at a future date. The credit union must disclose whichever option it uses to members. Credit unions shall calculate the annual percentage yield based on the actual number of days for the term of the account. For accounts without a stated maturity date (such as a typical share or share draft account), the calculation shall be based on an assumed term of 365 days. In determining the total dividends figure to be used in the formula, credit unions shall assume that all principal and dividends remain on deposit for the entire term, and that no other transactions (deposits or withdrawals) occur during the term. (This assumption shall not be used if a credit union requires, as a condition of the account, that members withdraw dividends during the term. In such a case, the dividends (and annual percentage yield calculation) shall reflect that requirement.) For term share accounts that are offered in multiples of months, credit unions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If credit unions choose to use this permissive rule, they must use the same number of days to calculate the dollar amount of dividends that will be earned on the account in the annual percentage yield formula (where "Dividends" are divided by "Principal".)

The annual percentage yield is to be calculated by use of the following general formula ("APY") is used for convenience in the formulas):

$$APY=100 [(1 + \text{Dividends/Principal})^{(365/\text{Days in term})} - 1].$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Dividends" is the total dollar amount of dividends earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account.